

DOCKET NO.: FBT-CV-15-6048078-S	:	SUPERIOR COURT
JONATHAN SHAPIRO	:	J. D. OF FAIRFIELD
VS.	:	AT BRIDGEPORT
FRANK DELBOUNO, JR. and CITY OF BRIDGEPORT	:	NOVEMBER 10, 2016

**MOTION FOR PERMISSION TO FILE SUPPLEMENTAL DISCOVERY**

Pursuant to Practice Book §13-6(b) and 13-9(a), the undersigned Defendants, Frank Delbouno, Jr. and City of Bridgeport, hereby move for permission to file the attached Supplemental Discovery upon the Plaintiff based upon the determination that the Standard Interrogatory and Production Request Forms 202 and 205 are inappropriate or inadequate in the present action for the following reasons:

1. On January 12, 2015, the Defendants filed written Interrogatory and Production Requests (consisting of standard Practice Book forms 202 and 205) in accordance with Sections 13-6 and 13-9 of the Rules of Practice and served the same in accordance with Section 10-12 of said Rules.
2. On March 4, 2015, the Plaintiff filed a Motion for a 30-day extension of time until April 13, 2015 within which to file a response to said discovery.
3. Thereafter, on April 13, 2015, the Plaintiff filed an initial response to said discovery and thereafter filed Supplemental Compliance.

4. The Plaintiff's aforementioned initial and supplemental discovery compliance, however, was incomplete to the extent that it failed to comply, or inadequately complied, to production requests 1 and 2 to the extent that the Plaintiff failed to provide a full and complete copy of all of the Plaintiff's medical records from all of the Plaintiff's medical treaters, particularly with regard to producing the initial intake/patient history forms for each treater.

5. The medical treatment records produced by the Plaintiff in his initial and supplemental responses to discovery reflected that the Plaintiff was claiming pain to the neck, back and upper extremity for which the Plaintiff was diagnosed as having an accident-related cervical and lumbar sprain and a related need for pain medication/treatment premised upon the Plaintiff having no significant past medical history of relevance. Said medical records made no reference to anything of significance in the Plaintiff's past medical history that would be relevant to the Plaintiff's claims of pain, pain treatment and projected need for future pain treatment at the projected cost of "\$268,800+".

6. At the Plaintiff's March 2, 2016 deposition, the Plaintiff first disclosed a past history significant for drug/substance abuse and addiction, including heroin and cocaine, and related treatment at numerous rehab facilities, which, if the Plaintiff did not disclose the same to his treating doctors, could be relevant in questioning the

validity of any accident related medical findings/conclusions and projected need for future pain treatment, particularly to the extent that the same was premised upon the Plaintiff's subjective claims of pain – that could be equally if not more likely attributable to feigned symptomatology by the Plaintiff to ensure pain medication to meet the Plaintiff's drug addiction needs.

7. At the October 25, 2016 status conference (which was requested by the defense to provide the Court with an update on when the Court's pretrial settlement figure would be presented for the City Council's consideration and approval, and also to seek the Court to order the Plaintiff to provide all further required discovery compliance that would be relevant for the City Council's consideration on the proposed settlement), the Court ordered the Plaintiff to produce the Plaintiff's cervical MRI film and all of the patient intake forms from all of the Plaintiff's medical treaters, premised upon the determination (Bellis, J.) that the Plaintiff was obligated to produce these records in response to Plaintiff's outstanding discovery.

8. Pursuant to the Court's aforementioned October 25, 2016 status conference Order (Bellis, J.), the Plaintiff thereafter produced on October 26, 2016 the Plaintiff's patient intake forms from all of the Plaintiff's medical treaters (except for Physical Therapy of Southern Connecticut which is no longer in business), along with

an authorization for the defense to acquire the Plaintiff's December 20, 2013 cervical MRI/film.

9. A review of the Plaintiff's October 26, 2016 Court ordered disclosure of all of the Plaintiff's patient intake forms from all medical treaters has disclosed that the Plaintiff never advised any of his medical treaters as to a past medical history significant for drug/substance abuse and addiction, including the use of heroin and cocaine. Indeed, in the medical intake form for Valley Orthopedic Specialists, the Plaintiff affirmatively misrepresented his social history by checking the no box for "substance abuse?". These late disclosed documents are extremely relevant to the extent that it now establishes that the Plaintiff failed to disclose and/or affirmatively misrepresented to all of his treating physicians, the fact that he had a past history significant for drug/substance abuse and addiction, including cocaine and heroin use, which now puts into serious question, the validity of any accident-related medical findings/conclusions and projected need for future pain treatment by Plaintiff's doctors, to the extent that the same was premised upon the Plaintiff's subjective claims of pain which the doctors did not know could be equally if not more likely attributable to feigned symptomatology by the Plaintiff to ensure pain medication to meet the Plaintiff's drug addiction needs. Accordingly, and as a consequence of this late disclosure by the Plaintiff of medical intake forms which the Court determined the

Plaintiff should have disclosed in response to the Defendant's standard January 12, 2015 discovery, the defense – in order to fully and properly defend against the Plaintiff's claims – must now move to file supplemental discovery requiring the Plaintiff to provide all past drug rehab/treatment info/records (which we now know were concealed from Plaintiff's counsel's treating physicians) which would be particularly relevant for use in questioning both the Plaintiff as well as for questioning the Plaintiff's treating doctors on whether they were advised by the Plaintiff of his significant history for drug/substance abuse and addiction reflected in said records, and if not, how if at all the information reflected in said records would change their treatment, diagnosis, prognosis/projections as to future pain treatment (to the extent that it was premised upon the Plaintiff's subjective complaints of pain) and as to what if any portion would be attributable to the accident versus the Plaintiff's addiction status/needs.

**WHEREFORE,** since the Standard Discovery allowed for under Connecticut Practice Book Forms 202 and 205 does not require the Plaintiff to provide all past drug rehab/treatment info/records which would be relevant in the present case in assessing the validity of any accident related medical findings/ conclusions and projected need for future pain treatment by Plaintiff's doctors – to the extent that the same was premised upon the Plaintiff's subjective claims of pain which the doctors

did not know could be equally if not more likely attributable to feigned symptomatology by the Plaintiff to ensure pain medication to meet the Plaintiff's drug addiction needs – the determination should be made that the Standard Practice Book forms are inappropriate and/or inadequate to address the current issues in the case so as to warrant and allow the Defendants to file the attached Supplemental Interrogatory and Production Requests requiring the Plaintiff to provide all records of treatment for substance/drug abuse during the 10-year period prior to the involved February 15, 2013 motor vehicle accident up to the present date. In addition, the Court should order the Plaintiff to provide a full and complete response to said Supplemental Discovery prior to the first scheduled date for Jury Selection on November 30, 2016.

**THE DEFENDANTS:**

BY: \_\_\_\_\_/s/  
**Lawrence A. Ouellette, Jr.**  
Associate City Attorney  
**OFFICE OF THE CITY ATTORNEY**  
999 Broad Street – 2<sup>nd</sup> Floor  
Bridgeport, CT 06604  
Telephone: 203-576-7647  
Juris No. 06192

**ORDER**

**The foregoing Motion for Permission is hereby ORDERED**

**GRANTED / DENIED**

\_\_\_\_\_  
**Judge / Clerk**

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed via first-class mail, postage prepaid, on this 10<sup>th</sup> day of November, 2016 to all counsel and pro se parties of record as follows:

Kevin C. Shea, Esq.  
Clendenen & Shea, LLC  
400 Orange Street  
New Haven, CT 06511

\_\_\_\_\_  
**/s/**  
**Lawrence A. Ouellette, Jr.**

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**DEFENDANTS' SUPPLEMENTAL DISCOVERY UPON PLAINTIFF**

**SUPPLEMENTAL INTERROGATORIES**

1. State the name and address of all drug rehab facilities, organizations or other individuals from which the Plaintiff sought treatment for substance/drug abuse during the ten-year period prior to the February 15, 2013 motor vehicle accident up to the present date.

**ANSWER:**



### **PRODUCTION REQUESTS**

1. Produce a complete copy of all treatment records from all of the drug rehab facilities, organizations or other individuals identified in response to Interrogatory No. 1 above.

### **THE DEFENDANTS:**

BY: \_\_\_\_\_ /s/  
**Lawrence A. Ouellette, Jr.**  
Associate City Attorney  
**OFFICE OF THE CITY ATTORNEY**  
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Kevin C. Shea, Esq.  
Clendenen & Shea, LLC  
400 Orange Street  
New Haven, CT 06511

\_\_\_\_\_/s/  
Lawrence A. Ouellette, Jr.

**OATH**

I hereby certify that I have reviewed the attached and that it is true and accurate to the best of my knowledge and belief.

By: \_\_\_\_\_  
Jonathan Shapiro

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2016.

\_\_\_\_\_  
Notary Public/  
Commissioner of the Superior Court